IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

MACON COUNTY INVESTMENTS, INC.; REACH ONE, TEACH ONE OF AMERICA, INC.,	)	
PLAINTIFFS,	)	
v.	)	**CIVIL ACTION NO.: 3:06-cv-224-WKW**
SHERIFF DAVID WARREN, in his official capacity as the SHERIFF OF MACON COUNTY, ALABAMA,	)	
DEFENDANT.	)	

SHERIFF DAVID WARREN'S MOTION TO COMPEL PRODUCTION

COMES NOW Sheriff David Warren ("Sheriff Warren") and, pursuant to Rule 37 of the Federal Rules of Civil Procedure, moves this Court to compel the Plaintiffs to respond fully to Sheriff Warren's Second Request for Production. See Fed. R. Civ. P. 37. More specifically, Sheriff Warren moves to compel production in response to Requests Nos. 2, 3, 4, 5, 6, 7, 8, 11, 13, 18, 19, 20, 21, 22, 23, 25, 26, 27, 37, and 38.[1] Counsel for Sheriff Warren certifies that he has made a good faith attempt to resolve this issue with counsel for the Plaintiffs pursuant to Rule 37(a) of the Federal Rules of Civil Procedure by telephone and by email correspondence dated May 4, 2006[2], but to no avail. In support of this Motion, Sheriff Warren states as follows:

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[1]Sheriff Warren's Second Request for Production is attached as Exhibit "A." The Plaintiffs' responses are attached as Exhibit "B."

[2]A copy of the email to counsel for Plaintiffs is attached hereto as Exhibit "C."

COURSE OF DISCOVERY

On February 15, 2007, Sheriff Warren propounded a set of 38 requests for production to the Plaintiffs. The February 15, 2007, requests were Sheriff Warren's Second Request for Production, and sought documents referenced during depositions by Frank Thomas ("Thomas"), president of Plaintiff Macon County Investments, Inc. ("MCII"), and Walter Walker ("Walker"), president of Plaintiff Reach One, Teach One ("ROTO").[3] On April 10, 2007, Plaintiffs submitted their responses to the Second Request for Production. Although Plaintiffs produced some requested items, neither Plaintiff MCII nor Plaintiff ROTO responded fully to the Requests. The Plaintiffs asserted a number of generic objections, but for the 20 Requests at issue, the Plaintiffs also made specific objections. Counsel for Sheriff Warren attempted to resolve the dispute informally with counsel for the Plaintiffs, but a resolution could not be reached. Therefore, Sheriff Warren now moves to compel full production with respect to the 20 Requests discussed in the next section of this Motion.

ARGUMENT

Plaintiffs failed to respond fully to Sheriff Warren's Second Request for Production, but have not offered any valid objections. Sheriff Warren requested documents and other items specifically referenced by Thomas and Walker in their individual depositions and relevant to their claims. Despite the fact that Sheriff Warren seeks documents referenced during deposition testimony, the Plaintiffs have objected that the Requests are overly broad, vague, or burdensome, even though Sheriff Warren seeks the materials to which

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[3] Relevant portions of the Thomas deposition are attached as Exhibit "D." Relevant portions of the Walker deposition are attached as Exhibit "E."

Plaintiffs' representatives previously alluded. Plaintiffs have also objected that all requested documents have been produced or that Plaintiffs are not in possession of the documents, but, as discussed in relation to each Request, these objections are inconsistent with Thomas's and Walker's deposition testimony and with basic logic. In short, the Plaintiffs have not offered any legitimate objections or excuses for their failure to produce the requested items, and this Court should grant Sheriff Warren's Motion to Compel production.

Request No. 2

Although Plaintiff MCII has produced drafts and unsigned copies of contracts for James Lane to supply 15 charities willing to name MCII as the operator of their bingo games, Plaintiffs have failed to produce the actual contract as requested by Sheriff Warren. In addition to producing unsigned drafts and the unsigned and undated agreement between Lane and Thomas, Plaintiffs reiterated their general objections and raised five additional objections. The Request and the Plaintiffs' response are as follows:

> 2. Contract between Frank Thomas and/or the Plaintiffs, or either of them, and James Lane.
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> RESPONSE: Plaintiffs adopt each and every general objection raised above as if fully set forth herein. Further, Plaintiffs object to this request as it is broad, vague and unduly burdensome, immaterial, and irrelevant. Without waiving the aforementioned objections, Plaintiffs state that all documents in its [sic] possession related to this request are produced. The Plaintiffs reserve the right to supplement this response at a later time.

However, the Plaintiff's objection that the request is too broad, vague, and unduly burdensome, lacks merit because Sheriff Warren simply seeks production of the actual, signed contract with Lane. The contract is both relevant and material to the issue of whether MCII was entitled to a license to operate a bingo facility and tends to establish MCII's knowledge that it was not qualified. Finally, the Plaintiffs' objection that all documents have been produced rings hollow given the failure to produce a signed copy of an agreement under which hundreds of thousands of dollars were paid to a consultant for securing the charities necessary for MCII to qualify to operate bingo games. Therefore, Sheriff Warren moves that this Court compel production of the final, fully executed contract for James Iane's services in securing 15 charities.

Request Nos. 3, 4, and 5

Thomas testified during deposition that he had paid approximately $50,000.00 in legal fees in connection with MCII's efforts to obtain a bingo license. However, Plaintiffs have failed to produce bills or records of payment to substantiate these claimed expenditures as requested by Sheriff Warren. (Thomas Dep. at 254:3-254:6.) In response to Request Nos. 3, 4, and 5, the Plaintiffs reiterated their general objections and raised seven additional objections. The Requests and the Plaintiffs' responses are as follows:

> 3. Any and all legal bills of the Plaintiffs and/or Frank Thomas from Robert D. Segall and/or Copeland, Franco, Screws & Gill, LLC from 2003 to the present.
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> RESPONSE: Plaintiffs adopt each and every general objection raised above as if fully set forth herein. Further, Plaintiffs object to this request as it is broad, vague and unduly burdensome, immaterial, and irrelevant. Plaintiff [sic] objects to this request on the basis of attorney-client privilege and work product.
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> . . .
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> 4. Any and all legal bills of the Plaintiffs of Frank Thomas from Thomas R. DeBray and/or Nabors, Belser & DeBray, LLC from 2003 to the present.
> RESPONSE: Plaintiffs adopt each and every general objection raised above as if fully set forth herein. Further, Plaintiffs object to this request as it is

> broad, vague and unduly burdensome, immaterial, and irrelevant. Plaintiff [sic] objects to this request on the basis of attorney-client privilege and work product.
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> . . .
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> 5. Any and all legal bills of the Plaintiffs or Frank Thomas from Stanley W. Gregory and/or Bradley, Arant, Rose & White, LLP from 2003 to the present.
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> RESPONSE: Plaintiffs adopt each and every general objection raised above as if fully set forth herein. Further, Plaintiffs object to this request as it is broad, vague and unduly burdensome, immaterial, and irrelevant. Plaintiff [sic] objects to this request on the basis of attorney-client privilege and work product.

The Plaintiffs' objections that the Requests are overly broad, vague, or burdensome, are without merit as Sheriff Warren limited the Requests to bills from the specific lawyers referenced by Thomas in his deposition and their law firms and limited the timeframe to 2003 through the present, which corresponds to the passage of the Macon County bingo amendment and the promulgation of the Bingo Rules and Regulations. (Thomas Dep. at 94:14-95:8; 111:13-111:15; 125:12-126:6; 144:2-11; 149:11-149:23; 151:1-151:3; 151:8-151:9; 202:15-203:9.) Plaintiffs' objections that the bills are not material or relevant are also without merit because Thomas has claimed $50,000.00 in attorneys' fees as part of the $1.5 million in expenses allegedly incurred in attempting to obtain a permit for MCII to operate a bingo facility in Macon County. (Thomas Dep. at 254:3-254:6.) The timing of meetings indicated by the billings is also relevant to the issue of MCII's knowledge that MCII was not entitled to a license to operate a bingo facility as Thomas testified at deposition that attorneys were hired to assist in finding charities, to lobby Sheriff Warren, and to prepare a revised set of rules and regulations for Sheriff Warren's consideration.

(Thomas Dep. at 94:14-23; 126:1-126:6; 144:2-144:11; 149:11-149:23; Finally, the Plaintiffs' objections that the bills from these attorneys and their law firms are privileged is unsupported by Eleventh Circuit caselaw, which holds that fees arrangements and payments are privileged only when they would serve to link the client to criminal activity or when they would necessarily disclose privileged information, neither of which is not the case in the present matter. See O'Neal v. U.S., 258 F.3d 1256, 1276 (11th Cir. 2001); In re: Grand Jury Matter No. 91-01386, 969 F.2d 995, 997-98 (11th Cir. 1992). Furthermore, the privileges claimed by Plaintiffs would be inapplicable given that the nature of the attorney's engagements were disclosed by Thomas during his deposition and involved discussions with third parties, including Sheriff Warren. See, e.g., U.S. v. Aronson, 781 F.2d 1580, (11th Cir. 1986) (holding that documents the disclosure of which to third parties is contemplated are not privileged). Therefore, Plaintiffs have not stated any valid objections to Sheriff Warren's Requests and this Court should compel production of the billing records sought.

Request No. 6

During his deposition testimony, MCII's president, Thomas, testified that he had engaged Joe Turnham to act as a lobbyist, but Plaintiffs have not produced all of the relevant documents requested by Sheriff Warren. In response to Request No. 6, the Plaintiffs produced a curriculum vitae for Turnham and a "Range of Strategic Consultative Services" but as to records of payment, Plaintiffs reiterated their general objections and raised five additional objections. The Request and the Plaintiffs' response are as follows:

> 6. Any and all contracts, consulting agreements, bills and records of payment to Joe Turnham.

> RESPONSE: Plaintiffs adopt each and every general objection raised above as if fully set forth herein. Further, Plaintiffs object to this request as it is broad, vague and unduly burdensome, immaterial, and irrelevant. Without waiving the aforementioned objections, Plaintiffs state that all documents in its [sic] possession related to this request are produced. The Plaintiffs reserve the right to supplement this response at a later time.

The Plaintiffs' objections to producing the record of payment that the Request is overly broad, vague, and burdensome, are baseless because the Request specifically identified the consultant, Joe Turnham, and identified the types of documents sought. The payment is relevant to the issue of Thomas's credibility and the timing of his actions with regard to participating in bingo. Thomas testified that the payment to Turnham was one component of the approximately $1.5 million that he had expended on MCII's behalf in connection with the proposed bingo facility venture. (Thomas Dep. at 252:15-252:16.) In addition, the Plaintiffs' objection that all documents in their possession have been produced is inconsistent with Thomas's deposition testimony that Turnham had been paid $45,000.00 to act as a lobbyist. (Thomas Dep. at 252:15-253:4.) That neither MCII nor its president, Thomas, would have a record of a $45,000.00 payment to a lobbyist is not plausible. Consequently, Sheriff Warren asks that this Court grant the Motion and compel Plaintiffs to produce the contract and record of payment to Joe Turnham.

Request No. 7

Thomas testified during his deposition that he spoke to Sheriff Warren concerning obtaining a bingo license in 2005. Plaintiffs have failed to produce the phone records requested by Sheriff Warren that would substantiate that testimony. (Thomas Dep. at 127:2-127:13.) In response to Request No. 7, the Plaintiffs reiterated their general objections and raised five additional objections. The Request and the Plaintiffs' response are as follows:

> 7. All cell phone records of Frank Thomas from November 2003 to the present.
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> RESPONSE: Plaintiffs adopt each and every general objection raised above as if fully set forth herein. Further, Plaintiffs object to this request as it is broad, vague, unduly burdensome, immaterial, and irrelevant.

The Plaintiff's objections that the Request is too broad, vague, and burdensome, are not well-taken, however, because Sheriff Warren seeks only the telephone records that would substantiate Thomas's claimed telephone conversations with Sheriff Warren. Specifically, Sheriff Warren seeks only those records from January 2005 through the filing of the present lawsuit. These records are relevant and material because the number and timing of the telephone conversations between Thomas and Warren and are relevant to the issue fo Thomas's credibility. In short, Plaintiffs have no valid objection to producing the requested telephone records for the time period from January 2005 through the filing of the present lawsuit, and this Court should compel production.

Request No. 8

Thomas testified that he gave contributions to at least two political action committees during the 2006 primaries which supported candidates opposing Sheriff Warren. However, Plaintiffs have failed to produce cancelled checks for the contributions. (Thomas Dep. at 182:12-184:16.) In response to Request No. 8, the Plaintiffs reiterated their general objections and raised five additional objections. The Request and the Plaintiffs' response are as follows:

> 8. Copies of all cancelled checks written by Frank Thomas to PACs in 2006.

> RESPONSE: Plaintiffs adopt each and every general objection raised above as if fully set forth herein. Further, Plaintiffs object to this request as it is broad, vague, unduly burdensome, immaterial, and irrelevant.

Contrary to Plaintiffs' objections, the Request is not vague, broad, or unduly burdensome, because Thomas testified that he gave $1,000.00 contributions to two political action committees during the last primary session. (Walker Dep. at 182:12-183:6.) Producing two cancelled checks, then, is hardly burdensome and no real question exists concerning the identity of the checks requested. Furthermore, the checks are relevant and material in that they evidence an intent to influence the elections to further MCII's ambition of obtaining a bingo license, which evidences knowledge that MCII was not entitled to obtain such a license under the existing rules. Consequently, this Court should grant Sheriff Warren's Motion and compel production.

Request No. 11

During his deposition, MCII's president, Thomas testified that he had paid Donald Watkins $1,000,000.00 as part of a consulting contract for MCII, but despite Sheriff Warren's request for a copy of the contract or evidence of payment to Watkins, the Plaintiffs have produced no documents supporting this claimed payment. (Thomas Dep. at 198:4-198:13; 199:1-199:6; 200:1-202:5.) Instead of producing the contract or consulting agreement and the evidence of payment, the Plaintiffs reiterated their general objections and raised three additional objections. The Request and the Plaintiffs' response are as follows:

> 11. Contract, consulting agreement, and evidence of payment to Donald Watkins.
>
> RESPONSE: Plaintiffs adopt each and every general objection raised above

> as if fully set forth herein. Further, Plaintiffs object to this request as it is broad, vague and unduly burdensome. Without waiving the aforementioned objections, Plaintiffs state that it [sic] has no such documents in its possession at this time. The Plaintiffs reserve the right to supplement this response at a later time.

The Plaintiffs' objections to this Request are baseless because Sheriff Warren has requested only copies of a specific contract or agreement with Watkins that Thomas referenced in his deposition and evidence of the payment that Thomas claimed had been made. (Thomas Dep. at198:4-198:13; 199:1-199:6; 200:1-202:5.) The Plaintiffs' other objection, that they did not possess the requested documents, is inconsistent with Thomas's sworn deposition testimony. Thomas specifically testified that Watkins had been paid $1,000,000.00 by Thomas's friend Al Gibbs as a retainer for a consulting agreement with MCII. (Thomas Dep. at 198:4-198:13; 199:3-199:6; 200:1-200:7; 200:22-201:2.) Thomas also specifically testified that there was a signed contract with Watkins for these consulting services. (Thomas Dep. at 201:11-201:12.) Given the testimony of MCII's president, Thomas, and the incredibility that one would pay $1,000,000.00 for consulting services yet have no evidence of the payment or the underlying agreement, the Plaintiffs' objection that they do not possess any documentation of the contract with Watkins or the payment strains belief. Therefore, Sheriff Warren asks that this Court grant the Motion and compel production of the requested documents.

Request No. 13

Walker testified during his deposition that ROTO's minutes prior to August of 2004 had been destroyed in a car fire. Plaintiffs have failed to produced any minutes for 2004, 2005, or 2006, as requested by Sheriff Warren, and Plaintiffs have not offered any legitimate objections. In response to Request No. 13, the Plaintiffs have simply reiterated their general objections and raised three additional objections. The Request and the Plaintiffs' response are as follows:

> 13. All minutes of Reach One, Teach One for calendar years 2004, 2005, and 2006.
>
> RESPONSE: Plaintiffs adopt each and every general objection raised above as if fully set forth herein. Further, Plaintiffs object to this request as it is broad, vague and unduly burdensome. Without waiving the aforementioned objections, Plaintiffs state that it [sic] has no such documents in its possession at this time. The Plaintiffs reserve the right to supplement this response at a later time.

However, the objections that the request is too broad, too vague, or unduly burdensome, is without merit has Sheriff Warren has specifically requested the minutes for ROTO and has limited the request to the years 2004, 2005, and 2006. The Plaintiffs' other objection--that the Plaintiffs do not have the documents in their possession--is inconsistent with Walker's deposition testimony. Whereas Walker testified that some minutes were destroyed in a car fire in August 2004, Walker also testified that ROTO normally holds its corporate meetings on December 31. (Walker Dep. at 99:6-101-13.) Thus, ROTO should have the records for its regular and special meetings since August 2004. In fact, Walker testified during his deposition that his wife, who is the Vice-President and Secretary/Treasurer for ROTO, had the minutes for 2004 and 2005 and that he could obtain them and produce them. (Walker Dep. at 100:7-100:15.) Consequently, ROTO has no legitimate excuse for failing to produce its minutes as requested by Sheriff Warren and this Court should compel production.

Request No. 17

Despite Walker's testimony during his deposition that he would need to consult ROTO's financial reports to answer questions about ROTO's activities, Plaintiff's have not produced any financial reports for ROTO. (Walker Dep. at 126:18-127:2.) In response to Request No. 17, the Plaintiffs reiterated their general objections and raised five additional objections. The Request and the Plaintiffs' response are as follows:

> 17. Copies of all financial reports to Reach One, Teach One referenced by Plaintiff Walker in his deposition.
>
> RESPONSE: Plaintiffs adopt each and every general objection raised above as if fully set forth herein. Further, Plaintiffs object to this request as it is broad, vague and unduly burdensome, immaterial, and irrelevant. Without waiving the aforementioned objections, Plaintiffs state that all documents in its [sic] possession related to this request are produced. The Plaintiffs reserve the right to supplement this response at a later time.

Contrary to the Plaintiffs' objections, the request for the financial reports is not overly broad or vague or burdensome because Sheriff Warren seeks only the reports referenced by Walker as "financial reports" during his deposition and seeks only the last five years' worth of these records. The documents are relevant and material because they go to the issue of whether ROTO is a bona fide charitable organization that can obtain a bingo license[4] and because Walker testified that he would need to consult these very records to answer questions about ROTO's activities. (Walker Dep. at 126:18-127:2.) Finally, according to Walker's testimony, these financial records should exist, but the Plaintiffs have failed to produce them. Therefore, Sheriff Warren moves that this Court compel production.

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[4] All versions of the Macon County Bingo Rules and Regulations define a "nonprofit organization" to mean a "bona fide organization" that operates for "charitable, educational, or other lawful purposes . . . ." See Macon County Bingo Rules and Regulations § 1(d); First Amended and Restated Rules and Regulations § 1(d); Second Amended and Restated Regulations § 1(d). Neither Plaintiff has challenged this provision.

Request No. 18

Sheriff Warren has requested copies of the titles to automobiles that Walker testified during deposition that ROTO had given away, but the Plaintiffs have failed to produce the requested documents. (Walker Dep. at 131:3-135:13.) In response to Request No. 18, the Plaintiffs reiterated their general objections and raised three additional objections. The Request and the Plaintiffs' response are as follows:

> 18. Copies of vehicle titles of cars given away through Reach One, Teach One within the last five (5) years.
>
> RESPONSE: Plaintiffs adopt each and every general objection raised above as if fully set forth herein. Further, Plaintiffs object to this request as it is broad, vague and unduly burdensome. Without waiving the aforementioned objections, Plaintiffs state that it [sic] has no such documents in its possession at this time. The Plaintiffs reserve the right to supplement this response at a later time.

This request is not overly broad, vague, or unduly burdensome because, based on Walker's deposition testimony, the number of vehicles given away within the last five years is likely in the single digits. During his deposition testimony, Walker recalled giving away a car in 2000, giving away a Plymouth Breeze at some other point, and testified that ROTO was in the process of giving away four or five additional vehicles. (Walker Dep. at 131:3-135:13.) Although Plaintiffs objected that titles to the donated cars were not in their possession, a legitimate charitable organization would be expected to keep records of automobiles that it has donated to recipients of its charity. This is especially true where, as here, the alleged donations constitute the only charitable activity for ROTO for the past 5 years. Therefore, Plaintiff ROTO should have these records but has failed to produce them. Consequently, Sheriff Warren respectfully asks that this Court compel Plaintiffs to produce copies of the titles to automobiles given away by ROTO in the last five (5) years.

Request No. 19

Sheriff Warren requested copies of any Form 872-C filed by ROTO, which Walker referenced in his deposition, but the Plaintiffs have not produced the requested document. (Walker Dep. at 164:1-164:23; 166:1-166:2.) In response to Request No. 19, the Plaintiffs reiterated their general objections and raised three additional objections. The Request and the Plaintiffs' response are as follows:

> 21. A copy of any Form 872-C prepared, submitted, and/or filed by Reach One, Teach One within the last ten (10) years.
>
> RESPONSE: Plaintiffs adopt each and every general objection raised above as if fully set forth herein. Further, Plaintiffs object to this request as it is broad, vague and unduly burdensome. Without waiving the aforementioned objections, Plaintiffs state that it [sic] has no such documents in its possession at this time. The Plaintiffs reserve the right to supplement this response at a later time.

These objection are without merit because Sheriff Warren's request specified the form sought by number, and Walker was clearly knowledgeable about this form given that he referenced it during his deposition. (Walker Dep. at 164:1-164:23; 166:1-166:2.) Furthermore, the number of Form 872-C's should be limited as Walker testified that "the 872Cs are what you put together when you want advanced ruling" on an IRS tax exemption application. (Walker Dep. at 166:1-166:2.) Finally, given that Walker testified that a Form 872-C is necessary for an advance ruling and that he gave Greg Carr copies of the document, ROTO's objection that it has no such documents is particularly meritless. (Walker Dep. at 164:1-164:23; 166:1-166:2.) Therefore, this Court should grant Sheriff

Warren's Motion and should compel production of the requested Form 872-C.

Request No. 20

Sheriff Warren also requested production of copies of any Form 8718 from ROTO, which Walker testified during deposition he had given to Greg Carr, but the Plaintiffs have not produced the requested document. (Walker Dep. at 164:1-164:23; 165:10-165:22.) In response to Request No. 20, the Plaintiffs reiterated their general objections and raised three additional objections. The Request and the Plaintiffs' response are as follows:

> 21. A copy of any Form 8718 prepared, submitted, and/or filed by Reach One, Teach One within the last ten (10) years.
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> RESPONSE: Plaintiffs adopt each and every general objection raised above as if fully set forth herein. Further, Plaintiffs object to this request as it is broad, vague and unduly burdensome. Without waiving the aforementioned objections, Plaintiffs state that it [sic] has no such documents in its possession at this time. The Plaintiffs reserve the right to supplement this response at a later time.

Again, these objections are meritless because Sheriff Warren's request specified the form sought by number, and Walker was clearly knowledgeable about this form given that he referenced it during his deposition. (Walker Dep. at 164:1-164:23; 165:10-165:22.) In addition, the number of copies of this form should be limited and, therefore, production would not be burdensome given Walker's deposition testimony that the Form 8718 is used "when you put your money together, you put your check" and that"you fold it up and put it in with, and you put all your pertinent information there."

(Walker Dep. at 165:19-165:22.) Based on this testimony, ROTO should have copies of the Form 8718, which renders its objection that it has no such document baseless. (Walker Dep. at 164:22-164:23.) Consequently, Sheriff Warren asks that this Court compel the production sought.

Request No. 21

In addition, Sheriff Warren also requested production of copies of any Form 8717 from ROTO, but the Plaintiffs have not produced the requested document even though Walker testified during deposition he had given copies to Greg Carr. (Walker Dep. at 164:1-164:23; 165:10-165:22.) In response to Request No. 21, the Plaintiffs reiterated their general objections and raised three additional objections. The Request and the Plaintiffs' response are as follows:

> 21. A copy of any Form 8717 prepared, submitted, and/or filed by Reach One, Teach One within the last ten (10) years.
>
> RESPONSE: Plaintiffs adopt each and every general objection raised above as if fully set forth herein. Further, Plaintiffs object to this request as it is broad, vague and unduly burdensome. Without waiving the aforementioned objections, Plaintiffs state that it [sic] has no such documents in its possession at this time. The Plaintiffs reserve the right to supplement this response at a later time.

These Plaintiffs' objections are without merit because Sheriff Warren's request specified the form sought by number, and Walker was clearly knowledgeable about this form as he discussed it during his deposition. (Walker Dep. at 164:1-164:23; 165:10-165:22.) Furthermore, the number of copies of this form should be limited and, therefore, production would not be burdensome because Walker testified during his deposition that the Form 8717 is used in forming a nonprofit and obtaining IRS tax exemption. (Walker Dep. at 165:19-165:22.) Finally, the Plaintiffs' objection that ROTO has no such document is baseless in light of Walker's deposition testimony that he gave Greg Carr copies of the 8717's. (Walker Dep. at 164:22-164:23.) Therefore, this Court should grant Sheriff

Warren’s Motion and compel production of the Form 8717's.

Request No. 22

Walker testified that ROTO tapes and documents all recipients of its charitable endeavors. However, the Plaintiffs have failed to produce the evidence of these charitable activities requested by Sheriff Warren. (Walker Dep. at 70:14-73:14; 78:5-78:14; 80:1-80:5; 84:18-84:22; 85:15-85:20; 116:2-116:8; 131:11-132:14; 208:5-208:14.) In response to Request No. 22, the Plaintiffs reiterated their general objections and raised three additional objections. The Request and the Plaintiffs’ response are as follows:

> 22. All photographs and/or video tapes of Reach One, Teach One programs, accomplishments, activities, or testimonials for the past ten (10) years.
>
> RESPONSE: Plaintiffs adopt each and every general objection raised above as if fully set forth herein. Further, Plaintiffs object to this request as it is broad, vague and unduly burdensome. Without waiving the aforementioned objections, Plaintiffs state that it [sic] has no such documents in its possession at this time. The Plaintiffs reserve the right to supplement this response at a later time.

These objections are baseless because ROTO’s president, Walker testified during his deposition that ROTO tapes all of its recipients and also testified that ROTO had photographs of at least some of its activities. (Walker Dep. at 70:23-71:1; 84:18-84:22; 85:15-85:20.) Producing all of the tapes and photographs would not be unduly burdensome given the limited number of such charitable activities recalled by Walker. (Walker Dep. at 70:14-73:14; 78:5-78:14; 80:1-80:5; 84:18-84:22; 85:15-85:20; 116:2-116:8; 131:11-132:14; 208:5-208:14.) Finally, despite Walker’s deposition testimony that some earlier records of charitable activities burned in a fire, Walker referenced other videotapes and photographs that apparently were not destroyed, but ROTO has not produced them as requested. (Walker Dep. at 72:20-72:23; 84:18-84:22.) Consequently, Sheriff Warren moves that this Court compel Plaintiff ROTO to produce the requested photographs and videotapes.

Request No. 23

Walker testified during his deposition that ROTO recorded all of its charitable activities. The Plaintiffs have failed to produce the documentation requested by Sheriff Warren. (Walker Dep. at 70:14-73:14; 78:5-78:14; 80:1-80:5; 131:11-132:14; 208:5-208:14.) In response to Request No. 23, the Plaintiffs reiterated their general objections and raised three additional objections. The Request and the Plaintiffs' response are as follows:

> 23. All audiotapes or other recordings of any meeting of Reach One, Teach One for the past ten (10) years.
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> RESPONSE: Plaintiffs adopt each and every general objection raised above as if fully set forth herein. Further, Plaintiffs object to this request as it is broad, vague and unduly burdensome. Without waiving the aforementioned objections, Plaintiffs state that it [sic] has no such documents in its possession at this time. The Plaintiffs reserve the right to supplement this response at a later time.

Contrary to the Plaintiffs' objections, the request is not overly broad, vague, or burdensome, because the Plaintiffs have requested only the tapes or recordings for the last ten years, which should be limited in number based on Walker's testimony. During his deposition, Walker stated that "everybody we help, we tape them." (Walker Dep. at 70:23-71:1.) Later, Walker testified that one of two tapes burned in a car fire that also destroyed some corporate minutes prior to 2004. (Walker Dep. at 72:20-72:23.) Thus, at least one of the tapes should exist, yet Plaintiffs have not produced any tapes as requested. Therefore, Sheriff Warren respectfully moves that this Court compel Plaintiff ROTO to produce the tapes sought in Request No. 23.

Request No. 25

During his deposition, Thomas stated that he had spent approximately $1.5 million on behalf of MCII in connection with MCII's efforts to obtain a license for a bingo facility. However, the Plaintiffs have not produced expense records substantiating those expenditures as requested by Sheriff Warren. (Thomas Dep. at 50:15-51:11; 199:3-199:6; 199:23-200:2; 205:3-2-5:6; 207:11-207:15; 216:11-216:22; 227:10-227:13; 252:15-252:20; 253:4-253:16; 254:3-254:6.) In response to Request No. 25, the Plaintiffs reiterated their general objections and raised five additional objections. The Request and the Plaintiffs' response are as follows:

> 25. Frank Thomas's list or other record of expenses related to the proposed gaming facility in Shorter, Alabama, including all checks, invoices, purchase orders and all other evidence of expenses totaling approximately $1.5 million as testified to in his deposition.
>
> RESPONSE: Plaintiffs adopt each and every general objection raised above as if fully set forth herein. Further, Plaintiffs object to this request as it is broad, vague and unduly burdensome, immaterial, and irrelevant. Without waiving the aforementioned objections, Plaintiffs state that all documents in its [sic] possession related to this request are produced. The Plaintiffs reserve the right to supplement this response at a later time.

Contrary to the Plaintiffs' objections, the request is not overly broad, vague, or unduly burdensome, because Sheriff Warren specifically limited the request to those expense records relating to MCII's proposed gaming facility in Macon County that Thomas discussed during his deposition. MCII is in a better than Sheriff Warren to know about the records related to the expenses that MCII's president recited during his deposition. In addition, the requested documents are relevant and material as they go to the issue of Thomas's credibility. Finally, based on Thomas's deposition testimony, the Plaintiffs' objection that all documents have been produced is suspect given that Thomas testified, among other items, to spending $1,000,000.00 on a consulting contract with Donald Watkins; spending $15,000.00 for a newspaper insert; paying $10,000.00 in accounting fees; spending $45,000.00 for Joe Turnham to act as a lobbyist; spending $40,000.00 on land clearing; and paying $50,000.00 in attorneys' fees; however, Plaintiffs have produced no documents supporting these claimed expenses. (Thomas Dep. at 199:3-199:6; 199:23-200:2; 216:11-216:22; 227:10-227:13; 252:15-252:20; 253:4-253:16; 254:3-254:6.) That one would spend these sums of money and have absolutely no documentation sorely lacks in credibility. Therefore, Sheriff Warren asks this Court to grant the pending Motion and to compel production of the requested expense records.

Request No. 26

Despite Sheriff Warren's request for records of contributions during the last five years to Macon County charities by MCII or its president, Plaintiffs have only produced a single check to ROTO in the amount of $10,500. (Walker Dep. at 207:1-207:23.) In response to Request No. 26, the Plaintiffs reiterated their general objections and raised five additional objections. The Request and the Plaintiffs' response are as follows:

> 26. A copy of all checks of Frank Thomas reflecting contributions to Macon County charities in the last five (5) years.
>
> RESPONSE: Plaintiffs adopt each and every general objection raised above as if fully set forth herein. Further, Plaintiffs object to this request as it is broad, vague and unduly burdensome, immaterial, and irrelevant

Given that Walker did not reference contributions to specific Macon County charities other than ROTO during his deposition testimony, the burden on him to produce checks documenting any other contributions will likely prove slight. Furthermore, the request is not vague or overly broad as it is limited to Macon County charities during the last five (5) years and, thus, will allow a comparison of Walker's contributions both before and after the passage of the Macon County bingo amendment. Finally, the request is highly material and relevant as it tends to show that Walker's interest in Macon County charities is limited to securing entities to serve as fronts to allow MCII to obtain a bingo permit and tends to establish bias on behalf of organizations, such as Plaintiff ROTO, which have received such contributions. Consequently, the Court should grant Sheriff Walker's Motion and compel production of the checks documenting Walker's charitable contributions.

Request No. 27

Although MCII's president Walker testified to the existence of a "black book" of charities used to identify ROTO as a possible sponsor of bingo games, Plaintiff's have failed to produce the book as requested by Sheriff Warren. In response to Request No. 27, the Plaintiffs reiterated their general objections and raised five additional objections. (Walker Dep. at 100:7-101:21; 103:8-103:20; 106:21-106:23.) The Request and the Plaintiffs' response are as follows:

> 27. A copy of the "black book" of charities received from Tuskegee Mayor Johnny Ford and referred to by Frank Thomas in his deposition.
>
> RESPONSE: Plaintiffs adopt each and every general objection raised above as if fully set forth herein. Further, Plaintiffs object to this request as it is broad, vague and unduly burdensome, immaterial, and irrelevant. Without waiving the aforementioned objections, Plaintiffs state that all documents in its [sic] possession related to this request are produced. The Plaintiffs reserve the right to supplement this response at a later time.

The objections that the request is too broad, vague, and unduly burdensome, are meritless, as Sheriff Warren seeks a single book and has identified it in the same manner as in Thomas's deposition, at which time Thomas expressed no confusion concerning the identity of the "black book." Furthermore, the "black book" is material and relevant to the issue of whether Plaintiffs made any legitimate effort to comply with the requirements of the Macon County bingo rules or whether MCII simply sought out a front to allow it to obtain a bingo license, something that the requirement for a minimum of fifteen (15) nonprofit organizations for designation as a qualified location sought to prevent. See Commentary to [2004] Amended & Restated Bingo Regulations § 2. Finally, although Thomas testified that Greg Carr was in possession of the "black book," he also testified that "I [Thomas] feel that I can get it." (Thomas Dep. at 103:20.) Therefore, the Plaintiffs' objection that they have produced all documents in their possession is misleading as Plaintiffs can obtain the "black book" from Carr or ask Carr to produce it. Consequently, Sheriff Warren moves that the Court compel production of the requested item.

Request No. 37

Although MCII's president, Thomas, testified during his deposition that he had spent $10,000.00 in accounting fees on behalf of MCII in connection with efforts to obtain a bingo license, Plaintiffs have not produced any records regarding the accounting bills as requested by Sheriff Warren. (Thomas Dep. at 253:6-253:10.) Rather than producing the bills, the Plaintiffs reiterated their general objections and raised three additional objections. The Request and the Plaintiffs' response are as follows:

> 37. Copies of all bills of the Plaintiffs, or Frank Thomas, from Jackson Thornton & Company relating to the establishment of the bingo gaming

facility in Macon County.

> RESPONSE: Plaintiffs adopt each and every general objection raised above as if fully set forth herein. Further, Plaintiffs object to this request as it is broad, vague and unduly burdensome. Without waiving the aforementioned objections, Plaintiffs state that it [sic] has no such documents in its possession at this time. The Plaintiffs reserve the right to supplement this response at a later time.

However, the Plaintiffs' objections that the Request is too broad, vague, and unduly burdensome, are baseless, as Sheriff Warren simply seeks copies of the bills for the accounting services that Walker claimed during his deposition as part of the expenses related to MCII's attempt to obtain a bingo license. Furthermore, these bills are relevant and material in that they go to the issue of Thomas's credibility and the timing of MCII's action to participate in bingo. Finally, Plaintiffs' claim that they are not in possession of the bills rings hollow given that MCII's president testified that $10,000.00 had been incurred in accounting expenses and no reasonable person would have expended such a sum without receiving a bill. For these reasons, Sheriff Warren asks that the Court grant the Motion and compel production of the requested accounting bills.

Request No. 38

Finally, although Thomas, testified during deposition that he had spent $40,000.00 for land clearing on MCII's behalf, the Plaintiffs have not produced any supporting bills or invoices as requested by Sheriff Warren. (Thomas Dep. at 253:11-253:16.) Instead, in response to Request No. 38, the Plaintiffs reiterated their general objections and raised three additional objections. The Request and the Plaintiffs' response are as follows:

> 38. Copies of all bills and invoices related to the clearing of the acreage where the proposed facility is to be located.

> RESPONSE: Plaintiffs adopt each and every general objection raised above as if fully set forth herein. Further, Plaintiffs object to this request as it is broad, vague and unduly burdensome. Without waiving the aforementioned objections, Plaintiffs state that it [sic] has no such documents in its possession at this time. The Plaintiffs reserve the right to supplement this response at a later time.

Plaintiff's objections that the Request is overly broad, burdensome, and vague, are meritless because Sheriff Warren merely requests the bills and invoices for the clearing of the land for MCII's proposed bingo facility about which Thomas testified in his deposition. (Thomas Dep. at 253:11-253:16.) Finally, the Plaintiffs' objection that they have no such documents strains credibility given that Thomas testified that the land clearing had cost approximately $40,000.00; a reasonable business person would not pay tens of thousands of dollars without receiving a bill or invoice. Therefore, Sheriff Warren moves that this Court compel production of the requested documents.

CONCLUSION

In conclusion, this Court should grant Sheriff Warren's Motion to Compel Production for the above-stated reasons.

Respectfully submitted,

s/Fred D. Gray, Jr.
One of the Attorneys for Defendant,
David Warren, Sheriff of Macon County,
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CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Kenneth L. Thomas, Esq.
Ramadanah M. Salaam, Esq.
Gary A. Grasso, Esq.
Adam R. Bowers, Esq.
John M. Bolton, III, Esq.
Charlanna Spencer, Esq.

And I certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

None.

s/Fred D. Gray, Jr.

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